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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

WAYMO LLC,

CASE NO. 3:17-cv-00939

Plaintiff,

15 |

vs.

**PLAINTIFF WAYMO LLC'S MOTION
FOR RELIEF FROM NON-DISPOSITIVE
PRETRIAL ORDER OF MAGISTRATE
JUDGE (DKT. 832)**

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

1 Pursuant to Civil L.R. 72-2, Plaintiff Waymo LLC (“Waymo”) respectfully submits these
 2 Objections to the Magistrate Judge’s Order Regarding Lyft-Related Documents. (Dkt. 832.)
 3 Waymo objects to the Court’s Order requiring production of documents responsive to Request
 4 Nos. 149-153, and 156. Waymo further respectfully requests that the Court stay the portions of
 5 the Order relating to these Requests until the Court rules on these objections and all appeals are
 6 resolved.

7 **I. REQUEST FOR A STAY**

8 Magistrate Judge Corley’s underlying Order (Dkt. 832) requires Waymo to produce the
 9 documents at issue by July 13, 2017. Waymo requests that the Court stay Judge Corley’s Order as
 10 it relates to Request Nos. 149-153 and 156, until the Court rules on these objections and all
 11 appeals are resolved.¹

12 **II. THE MAGISTRATE ERRED IN RULING THAT DOCUMENTS RESPONSIVE
TO REQUEST NOS. 149-153 AND 156 SHOULD BE PRODUCED.**

14 The Magistrate erred in ruling that Waymo should produce documents responsive to Request
 15 Nos. 149-153 and 156. These Requests seek information relating to the recent announcement of a
 16 collaboration between Waymo and Uber-rival Lyft. The terms of that agreement are extremely
 17 confidential and have not been publicly disclosed by Waymo or Lyft. In the Order below, Magistrate
 18 Judge Corley focused on the purported relevance of the documents Uber seeks, but took inconsistent
 19 positions with respect to Waymo and Lyft’s production of these documents. With respect to Waymo,
 20 the Court stated: “that the documents are commercially sensitive does not make them non-
 21 discoverable.” (Dkt. 832 at 3.) But, with respect to Lyft, the Court stated: “Defendants’ suggestion
 22 that the protective order covering this case ameliorates any confidentiality concerns . . . is unavailing.”
 23 (*Id.* at 5.) Initially, it is not Waymo’s position that the mere commercial “sensitivity” of these
 24 documents warrants non-production. Rather, Waymo showed below that the requested documents are
 25 not relevant and Uber does not need them beyond the documents Waymo already agreed to produce.

26 ¹ Stays of prior Orders from Magistrate Judge Corley granting motions to compel pending
 27 appeals were issued, over Waymo’s objection.

1 But, in any event, requiring Waymo to produce the requested documents would undermine the
 2 confidentiality concerns that the Court recognized with respect to Lyft. Ordering production by
 3 Waymo effectively undoes the Court's finding as to confidentiality with respect to Lyft.

4 Further, as Waymo showed below, the minimal relevance of these documents is not
 5 "proportional to the needs of the case, considering the importance of the issues at stake in the action,
 6 the amount in controversy, the parties' relative access to relevant information, the parties' resources,
 7 the importance of the discovery in resolving the issues, and whether the burden or expense of the
 8 proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b). Waymo already agreed to
 9 produce documents directed at the issues Uber claims the Lyft documents are relevant to, thus Uber
 10 does not need these additional, highly confidential documents relating to a collaboration between
 11 Uber's competitors.

12 For example, Uber argued that information about the Lyft deal "appear[s] at least relevant to
 13 (1) the valuation of self-driving technology for purposes of analyzing damages." (Dkt. 687 at 5.) Uber
 14 did not present any basis to believe that a collaboration between two companies would involve a
 15 valuation. Uber's Lyft-related document requests do not even specifically ask for such valuations. In
 16 fact, they go well beyond the scope of being limited to valuations, seeking agreements between
 17 Waymo and Lyft, letters of intent, term sheets, and analysis and due diligence relating to the deal.

18 Further, Uber argued that its requests go to "the appropriateness of injunctive relief, given
 19 Waymo's assertions that Uber has negatively impacted Waymo's first-mover advantage." (Dkt. 687 at
 20 5-6.) As Waymo explained in opposition to Uber's motion to compel, however, the Lyft deal does not
 21 affect and is not relevant to Waymo's first-mover advantage. Uber eroded Waymo's technical lead by
 22 stealing trade secrets to accomplish in months what took Waymo "sustained effort over many years."
 23 (Dkt. 23 (Complaint) at 5 ¶ 10.) The extent of Uber's improper acceleration of its program is not
 24 impacted by the nature of Waymo's deal with Lyft. And again, Uber need not look to Lyft-related
 25 documents for irreparable-harm discovery because Waymo already agreed to provide it. (*See* Dkt.
 26 688-5, Response to RFP Nos. 89 (agreeing to produce "all documents on which Waymo intends to rely
 27 to demonstrate that it will suffer irreparable harm"); 90-97 (agreeing to produce documents concerning
 28 its business plans, forecasts, and analyses and competition and barriers to entry, documents which

1 include discussion and analysis of the first-mover advantage)). The Court dismissed these other
 2 Requests, saying that Uber is entitled to develop its own defense and “need not rely solely on what
 3 [Waymo] contends is relevant.” (Dkt. 832 at 3.) But the documents Waymo already agreed to
 4 produce are not solely limited to “what [Waymo] contends is relevant.” (*Id.*) They are documents that
 5 are responsive to Uber’s document requests. Request Nos. 90-97 in particular seek broad categories of
 6 documents relating to this topic; they are not limited to “what [Waymo] contends is relevant.” (*Id.*) In
 7 the Order, the Court only addressed Request Nos. 89 and 93, and ignored Waymo’s agreement to
 8 produce documents responsive to Request Nos. 90-92 and 94-97. Uber simply does not need
 9 documents relating to the Lyft deal in addition to the documents Waymo agreed to produce in response
 10 to Request Nos. 89-97.

11 Moreover, Uber argued that its requests go to “industry practice regarding and knowledge
 12 about self-driving technology.” (Dkt. 687 at 6.) As Waymo argued in its opposition to Uber’s motion
 13 to compel, to the extent that Uber wants to capture any disclosure by Waymo to Lyft of trade-secret
 14 information, Waymo already agreed to produce “communications between Waymo and any third party
 15 regarding any of the Alleged Waymo Trade Secrets,” whether that third party is Lyft or anyone else.
 16 (Dkt. 688-5, Response to RFP No. 114.) The Court did not address this Request in its Order. (Dkt.
 17 832.) And, with respect to Lyft, the Court held that Uber’s argument that the requested documents go
 18 to “industry practices” “does not come close to showing substantial need.” (Dkt. 832 at 5.) As the
 19 Court said:

20 Lyft has demonstrated that “even if any of the purported trade secrets were
 21 exchanged, there is no question that those trade secrets were received pursuant to
 22 [the companies’ non-disclosure] agreement and the other confidentiality protections
 23 that Lyft (and Waymo) put into place.” Further, the issue in this lawsuit is how
 24 [Waymo] treated its information, not how Lyft treats its information. Under that
 25 reasoning, Defendants would be entitled to subpoena all technological companies
 26 to determine ‘industry practice’ in the treatment of technological information.

27 (*Id.* at 5.) This analysis applies equally to the request for Lyft-related documents from Waymo
 28 purportedly to determine “industry practice.” The requested documents from Waymo are not
 needed to show “industry practice” any more than they would be from Lyft.

1 For these reasons, this Court should sustain Waymo's Objections and hold that Waymo is not
2 required to produce documents responsive to Request Nos. 149-153 and 156. In the alternative, the
3 Court should narrow the scope of the documents Waymo is required to produce in response to Request
4 Nos. 149-153, and limit them to any documents from the Lyft deal and negotiations relating to it which
5 discuss Waymo's trade secrets at issue in this case. This narrowed set of documents, to the extent they
6 exist, would address the subject matter Uber purports to seek with these Requests.

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9 DATED: July 11, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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By /s/ Charles K. Verhoeven

Charles K. Verhoeven
Attorneys for WAYMO LLC